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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,804	11/18/2003	Harald Kloeckner	FA1114USNA	6772

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EXAMINER

MICHENER, JENNIFER KOLB

ART UNIT PAPER NUMBER

1762

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/716,804

Applicant(s)

KLOECKNER ET AL.

Examiner

Jennifer K. Michener

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1, 3-9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liedtke et al. (5,871,809) in view of Pfanstiehl (5,730,644).

Examiner maintains the rejection of the previous office action.

2. Claims 2, 10-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liedtke in view of Pfanstiehl as applied to claims 1, 3-9, and 16 above, and further in view of Stengel et al. (5,545,824).

Examiner maintains the rejection of the previous office action.

Response to Arguments

3. Applicant's arguments filed 1/10/2005 have been fully considered but they are not persuasive.

Applicant argues that Liedtke fails to teach "fading out" or repairing only a blemished area. Applicant argues that while Pfanstiehl teaches blending in a repaired area with a surrounding area, he fails to teach the novel method of blending in of Applicant, the use of the coatings of Applicant, specifically hydroxyl binders and polyisocyanates, or spraying. Applicant argues there is no motivation to combine a repair process for an entire surface with a touch-up method and kit.

Examiner disagrees.

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Examiner has applied these references in combination.

The test of obviousness is not express suggestion of the claimed invention in any or all references but rather the references taken collectively would suggest to those of ordinary skill in the art presumed to be familiar with them. *In re Rosselet*, 347 F.2d 847, 146 USPQ 183 (CCPA 1965); *In re Hedges*, 783 F.2d 1038.

Examiner has acknowledged that Liedtke fails to teach all elements of the claims and has relied upon Pfanstiehl to teach those elements. Namely, Liedtke teaches the repair process claimed, as outlined in the previous office action. While Liedtke is primarily directed towards coating an entire surface, as a particular embodiment of his invention, he also mentions repair coatings of old finishes. The reference fails to teach the specifics of this alternative embodiment. It would have been obvious to an ordinary artisan, when desiring to use the coating methods and compositions of Liedtke for a repair process, instead of an entire re-coat operation, to look to the prior art for a suitable method to accomplish such a repair. Pfanstiehl is cited merely to teach that, in a repair operation, the defect *and the surrounding area* is sanded and that "if a smooth unbroken surface is to be restored to the paint finish, feather edging necessitates the filling of contiguous areas with touch-up paint in decreasing thickness as the touch-up paint approaches the edges of the sanded area." Feather edging, as taught by Pfanstiehl, is the blending-in required by the claims. These teachings provided the motivation to combine the references as outlined in greater detail in the previous office action.

Applicant argues that Stengel adds nothing to the disclosure of Liedtke and/or Pfanstiehl with regard to repairs.

Examiner notes that Stengel is cited merely to teach that pigmented topcoats (as required by claim 2) may be used interchangeably in the field of automobile coating with the color plus clear coats (as required by claim 1) of the Liedtke in view of Pfanstiehl rejection. The repair element of the claims was addressed in the Liedtke rejections. Liedtke and Applicant use traditional original paint in their repair operations, so it would have been obvious to an ordinary artisan to look to the prior art regarding the compositions of such paint.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer K. Michener whose telephone number is (571) 272-1424. The examiner can normally be reached on Tuesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy H. Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JENNIFER MICHENER
PRIMARY EXAMINER

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April 9, 2005